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16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**

18 IN RE: ZOOM VIDEO COMMUNICATIONS,
19 INC. PRIVACY LITIGATION

20 This Document Relates To:

21 ALL ACTIONS

CASE NO: 5:20-cv-02155-LHK

**JOINT DECLARATION OF TINA
WOLFSON AND MARK C.
MOLUMPY IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF PROPOSED CLASS
ACTION SETTLEMENT**

Hon. Lucy H. Koh
Courtroom: 8
Date: October 21, 2021
Time: 1:30 PM

1 We, Tina Wolfson and Mark Molumphy, declare and state as follows:

2 1. I, Tina Wolfson, am a member of the bar of the State of California, New York, and
3 District of Columbia and duly licensed to practice before all courts of the State of California as well
4 as other state and federal courts. I am a partner and founding member of the law firm Ahdoot &
5 Wolfson, PC (“AW”), established in 1998, and have litigated complex consumer and privacy class
6 actions for over two decades.

7 2. I, Mark Molumphy, am a member of the bar of the State of California and duly
8 licensed to practice before all courts of the State of California as well as other federal courts. I am
9 a partner at the law firm of Cotchett, Pitre & McCarthy LLP (“CPM”), and have litigated complex
10 consumer and privacy class actions for over two decades.

11 3. We are interim co-lead counsel for the Class Representatives and the putative class.
12 We have personal knowledge of the facts stated below and with the proceedings in this case. If
13 called as witnesses, we would and could competently testify thereto to all facts within our personal
14 knowledge.

15 4. We respectfully submit this joint declaration in support of Plaintiffs’ Motion for
16 Preliminary Approval of Proposed Class Action Settlement (“Motion”). As discussed below, we
17 believe the proposed settlement provides a substantial recovery in a case presenting novel and
18 complex issues and substantial risks, and is a fair, reasonable, and adequate result for the Class.

19 5. Attached hereto as Exhibit “1” is the Class Action Settlement Agreement and
20 Release entered into between the Parties to this litigation. The Settlement Agreement provides both
21 a monetary payment from Zoom of \$85 million and significant injunctive relief relating to Zoom’s
22 operations, its Meetings app, and privacy practices benefitting all Zoom users.

23 6. At the time the Settlement Agreement was reached, we, and members of our
24 respective firms, had a firm understanding of the risks and benefits of further litigation. We have
25 been actively and personally involved in every aspect of this litigation since its inception, and (i)
26 conducted a wide-ranging and extensive investigation into the Settlement Class’s claims; (ii) filed
27 three comprehensive consolidated complaints; (iii) successfully opposed Defendant’s motions to
28 dismiss as to certain theories of liability; (iv) engaged in a comprehensive discovery program,

1 including pursuit of document requests served on Zoom and subpoenas served on numerous third
2 parties, extensive search term negotiations and motion practice, and review of documents produced
3 by Zoom, third parties, and governmental sources; (v) responded to Zoom's written discovery,
4 including over 60 document requests served on each of the Class Representatives; (vi) briefed and
5 argued numerous motions over discovery issues before Magistrate Judge Susan van Keulen, and an
6 appeal to this Court (Dkt. Nos. 135, 142, 150, 152, 154, 157, 164, 165, 170, 175) resulting in the
7 production of additional documents; and (v) consulted with several experts on disputed issues, and
8 later settlement, including technical experts on Zoom's platform, data encryption and privacy, as
9 well as a damages experts to value the claims of the class. Collectively, Plaintiffs' Counsel have
10 devoted thousands of hours to litigating this case.

11 7. We agreed to recommend to the Class Representatives to settle the Action, on terms
12 and conditions of the Settlement, after considering: (i) the substantial monetary and prospective
13 non-monetary benefits that Class Members will receive from the resolution of the Action; (ii) the
14 substantial risks of continued litigation, including informed consideration of the strengths and
15 weaknesses of their claims and defenses; and (iii) the desirability of permitting the Settlement to be
16 consummated as provided by the terms of the Settlement.

17 8. The Settlement Agreement was reached after extensive mediation efforts, lasting
18 nine months. The settlement discussions were overseen by Judge Jay C. Gandhi (Ret.), a former
19 U.S. Magistrate Judge and respected mediator with JAMS.

20 9. Prior to mediation, the Parties exchanged and vetted information to prepare for and
21 facilitate productive mediation sessions. Before any terms were negotiated, the Plaintiffs had a
22 thorough understanding of the composition of the Settlement Class, the nature of Zoom's
23 anticipated defenses on the merits, the likely nature of arguments that would be advanced at class
24 certification, summary judgment, and trial, and the complex technical issues surrounding the claims
25 and defenses, and potential injunctive relief, which Plaintiffs' counsel reviewed and analyzed with
26 their consulting experts.

1 10. The Parties commenced mediation in early November 2020. Although progress was
2 made during these early sessions, the case did not settle at that time, and the Parties continued
3 negotiations with Judge Gandhi, along with concurrent discovery efforts.

4 11. These negotiations were extensive, at arms-length, and spanned over the course of
5 nine months. They included four formal mediation sessions and numerous additional discussions
6 facilitated by Judge Gandhi. Judge Gandhi remained highly involved throughout the lengthy
7 negotiation process.

8 12. During the mediation process, Class Counsel continued to receive additional
9 information from Zoom and through its own independent investigations. Plaintiffs learned that
10 Enterprise-Level and Government Account users are factually differently positioned than those of
11 ordinary consumers because they negotiate the terms of their contracts with Zoom individually to
12 their specific needs, often with the help of sophisticated IT departments, and do not purchase their
13 products “off the shelf.”

14 13. While the Parties reached agreement on certain key terms of the Settlement in early
15 April, 2021, and reported this to the Court on April 7, 2021 (Dkt. No. 176), the Parties had yet to
16 reach agreement on many other key terms, including injunctive relief, and continued to negotiate
17 these issues through additional mediation sessions.

18 14. Ultimately, with the participation of prominent data privacy experts, and after
19 participating in numerous video and phone conferences with Zoom’s counsel and Zoom in-house
20 counsel, Plaintiffs successfully negotiated significant injunctive relief in addition to monetary
21 relief. These injunctive relief negotiations, which extended for months, included several iterations
22 and revisions of written proposals and counter-proposals, discussions with Zoom’s in-house
23 counsel, consultation with experts, and an additional day of mediation with Judge Gandhi.

24 15. Subsequently, the Parties negotiated the details of a fair and workable distribution
25 plan over the course of many days. Numerous drafts and redlines of the Settlement Agreement and
26 its many exhibits were exchanged, followed by lengthy discussions between the Parties and
27 negotiations about myriad issues.

1 16. The Parties also collaborated on the logistics and substance of the notice and
2 administration of the Settlement. Plaintiffs' Counsel spent numerous hours obtaining and
3 negotiating bids from three well-established and experienced class action administration firms.
4 Epiq was selected after a competitive bidding process during which Class Counsel considered
5 proposals from two other potential administrators. Class Counsel previously worked with Epiq, the
6 two other bidders, as well as other professional administrators.

7 17. In Class Counsel's experience, the estimated costs for settlement notice and
8 administration, set forth in the concurrently filed Declaration of Cameron R. Azari, are reasonable
9 and competitive.

10 18. Proposed Class Representatives have been dedicated and active participants in this
11 litigation. They assisted in the investigation of the facts, participated in the plaintiff vetting process
12 implemented by their respective counsel and Class Counsel, reviewed and approved the various
13 complaints, participated in discovery, and kept in close contact with counsel to monitor the progress
14 of the litigation and the Settlement negotiations.

15 19. Based on our experience, we believe the Settlement is fair, reasonable, and adequate.
16 We further believe that given the substantial risks of this litigation, the Settlement is in the best
17 interests of the Class.

18 20. Based on consultation with damage experts, the Settlement's monetary benefit,
19 including the proposed plan to distribute 15% of total core subscription payments (or \$25,
20 whichever is greater), provides a substantial recovery—particularly considering the risks of this
21 case. For example, the alleged end-to-end encryption misrepresentations concern only one feature
22 of the Zoom services among the numerous benefits that Paid Subscribers received. Moreover, the
23 proposed payment of \$15 to Class Members who never paid for Zoom is within the ballpark of what
24 consumers may be willing to receive in exchange for the type of data the SAC alleges Zoom
25 disclosed. The total monetary recovery of \$85 million also represents a significant percentage of
26 the Class' potential damages were they to prevail at trial, taking into account the limited theories of
27 recovery that were allowed to proceed following motions to dismiss, based primarily on implied
28

1 contract claims, and taking into account the significant risks of no recovery in the event a class was
2 not certified or the Class did not prevail at trial on their claims.

3 21. In preparing a plan of distribution, we worked with our damages expert and took
4 into account the strength of claims of paid and unpaid subscribers to Zoom services. We anticipate
5 that a greater percentage of Paid Subscription Claims will be submitted compared to User Claims,
6 because the Settlement Payment amount for Paid Subscription Claims is likely to be higher than for
7 User Claims. Data provided by Zoom indicates that, on average, Class Members who paid for a
8 subscription to Zoom paid approximately \$250 during the Class Period. The proposed distribution
9 of 15% of this amount represents, on average, about \$37.50 per Paid Subscriber, though persons
10 will be entitled to more or less based on the amounts they paid and total number of claims submitted.

11 22. While it is inherently difficult to predict claims rates with precision, based on the
12 substantial recovery, comparable settlements, and the ubiquity of Zoom's platform, Plaintiffs
13 expect the claims rate for Paid Subscription Claims will be between 1% and 5% and the claims rate
14 for non-paying User Claims will be between 1% and 2%.

15 23. We based these assumptions on claims rates in a number of privacy and consumer
16 class action settlements, including: *In re Google Plus Profile Litig.*, No. 5:18-cv-06164 (N.D. Cal.)
17 (1.13% claims rate); *In re LinkedIn User Privacy Litig.*, No. 5:12-cv-03088 (N.D. Cal.) (0.70%
18 claims rate); *In re Vizio, Inc. Consumer Privacy Litig.*, No. 8:16-ml-02693 (C.D. Cal.) (3.2% claims
19 rate); *In re Experian Data Breach Litig.*, No. 8:15-cv-01592 (C.D. Cal.) (2% claims rate); *In re*
20 *Anthem, Inc. Data Breach Litig.*, No. 5:15-md-02617 (N.D. Cal.) (1.8% claims rate).

21 24. Even assuming claims reach the high end of both estimates listed above, the recovery
22 will still be substantial. At a 5% Paid Subscription Claims rate and 2% User Claims rate
23 (approximately 276,000 paid and 4.32 million unpaid claims), paid subscribers would receive, on
24 average, approximately \$34, and non paying users would receive approximately \$11. At slightly
25 lower claims rates (3% Paid Subscriber Claims and 2% User Claims; approximately 165,000 and
26 4.32 million claims, respectively), the recovery would be approximately \$35 (on average) for paid
27 subscribers and \$12 for non-paying users.

1 25. These estimates are based on conservative class size of 221.7 million – likely higher
2 than the true number. Zoom disclosed that the number of class members who are eligible Paid
3 Subscription Claims and User Claims, and for which they have contact information, is
4 approximately 160 million collectively. Approximately 5.5 million of this 160 million population
5 are paid subscribers eligible to submit a Paid Subscription Claim. However, the Settlement Class,
6 as defined, includes those who used Zoom but did not register with Zoom or pay for an account.
7 Zoom states that it has no reliable data with which to reliably estimate the the size of this part of
8 the Settlement Class. A class consisting of 221.7 million members, in our opinion, is a conservative
9 amount upon which to base these Settlement Payment estimates.

10 26. These estimates are also based on Zoom’s disclosure that it collected approximately
11 \$1.379 billion in Zoom Meetings Subscriptions from the roughly 5.5 million Class Members who
12 paid for the subscription. The estimates also take into account potential reductions from the
13 Settlement Fund for any fees, expenses or service awards approved by the Court. Epiq estimates
14 that its Settlement Administration Expenses will be approximately \$2.833 million, which would be
15 be deducted from the Settlement Fund prior to distributing the Net Settlement Fund.

16 27. Class Counsel intends to seek attorneys’ fees up to 25% of the Settlement Fund, or
17 \$21.25 million. As of July 29, 2021, Class Counsel and Executive Committee members incurred
18 approximately \$ 5.51 million in lodestar for the work performed. Class Counsel’s request for a fee
19 up to 25% of the Class Settlement Amount represents a multiplier of 3.86 on the current lodestar.
20 The Settlement is also a global resolution of litigation pending in California state court, and counsel
21 in that action have agreed to the settlement terms and not to separately seek and fees or expenses in
22 the California state litigation.

23 28. Class Counsel also intend to seek reimbursement for expenses incurred in this
24 litigation, not to exceed \$200,000; to date they have expended approximately \$145,000, and expect
25 to incur additional expenses prior to the Final Approval Motion. These expenses include, among
26 others, expert fees, court fees, service of process, consultant fees, mediation costs, online legal and
27 factual research, travel costs, reproduction costs, document review database expenses, ESI vendor
28 expenses (who assisted with collection of certain data from Plaintiffs during discovery), and

messenger, courier, and overnight mail expenses. These expenses were critical to Class Counsel's success in achieving this Settlement, and are reasonable.

29. Class Counsel submits that the settlements in *In re: Apple Inc. Device Performance Litigation*, No. 5:18-md-02827-EJD (N.D. Cal.), and *In re: Vizio, Inc., Consumer Privacy Litigation*, No. 8:16-ml-02693-JLS-KES (C.D. Cal.), provide useful comparisons to this Settlement:

	<i>In re: Apple Inc. Device Performance Litig.</i> , No. 5:18-md-02827-EJD (N.D. Cal.)	<i>In re: Vizio, Inc., Consumer Privacy Litig.</i> No. 8:16-ml-02693-JLS-KES (C.D. Cal.)
Settlement Fund	\$310 million	\$17 million
Number of Class Members	106,200,853	16 million devices
Number of Class Members Notice Was Sent	~93,198,046	7,828,308
Methods of Notice	Direct email notices; settlement-specific website; postcard notices; dedicated email address; toll-free information line; earned media	Direct display on TVs; email notice; digital media campaign; nationwide press release; settlement website
Claim Forms Submitted (Number and %)	~3,403,419 (3.2%)	511,562 (3.2%)
Avg. Recovery	Approx. \$91.03	\$18/device
Amounts Distributed to Cy Pres Recipients	N/A	\$71,634.38 (pending approval)
Administrative Costs	\$7,248,749.18 (appeal pending, subject to change)	\$200,000 estimated total, \$122,823 incurred as of Dec. 2019
Attorneys' Fees and Costs	\$80.6 million/\$995,244.93 (appealed)	\$5,610,000 and \$181,808.59

We declare under penalty of perjury that the foregoing is true and correct. Executed under the penalty of perjury that the foregoing is true and correct.

Executed on this 30th day of July, 2021, by Mark C. Molumphy in Burlingame, California
Tina Wolfson in Los Angeles, California.

/s/ Mark C. Molumphy
Mark C. Molumphy

/s/ Tina Wolfson
Tina Wolfson

SIGNATURE ATTESTATION

I am the ECF User whose identification and password are being used to file the foregoing Notice of Motion and Motion for Preliminary Approval of Proposed Class Action Settlement; Memorandum of Points and Authorities in Support Thereof. Pursuant to L.R 5-1(i)(3) regarding signatures, I, Tina Wolfson attest that concurrence in the filing of this document has been obtained.

DATED: July 31, 2021

/s/ Tina Wolfson

Tina Wolfson